IN THE

Supreme Court of the United States

OCTOBER TERM, 1941
No. 252

ALLEN-BRADLEY LOCAL NO. 1111, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, ET AL.,
Appellants,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD AND ALLEN-BRADLEY COMPANY,
Respondents.

Appeal From the Supreme Court of the State of Wisconsin

APPELLANTS' BRIEF

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CORNELIUS PRINTING COMPANY

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OPINIONS BELOW

The opinion of the Supreme Court of the State of Wisconsin in this case is reported in 237 Wis. 164, 295 N. W. 791, and is also found in the Record at pages 37–54. The opinion of the Circuit Court of Milwaukee County is not reported but appears on pages 24–26 of the Record.

STATEMENT AS TO JURISDICTION

Statement of Jurisdiction has been separately filed in the above matter, as required by Supreme Court Rule 12, Section 1, and is therefore omitted herein.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, of the federal Constitution, which provides:

> "Congress shall have the power to regulate the commerce with the foreign nations and among the several states."

National Labor Relations Act (Act of June 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Sec. 151–166)

Wisconsin Peace Employment Act, Wisc. Laws of 1939, c. 57, Wisc. Stat. (1939) c. 111.

The provisions of these two statutes have been printed in parallel columns as an Appendix to this Brief.

STATEMENT OF THE CASE

The appellants are certain employees of the respondent, Allen-Bradley Company, and their Union, Allen-Bradley Local 1111, United Electrical, Radio and Machine Workers of America. The Company, one of the appellees, is a manufacturer of electrical control equipment in the City of Milwaukee, Wisconsin, and employs approximately 700 workers. It was stipulated that the Company purchases from sources and makes sales outside the State of Wisconsin, so that it is subject to the National Labor Relations Act, and the jurisdiction of the National Labor Relations Board, (R. 2, 22, 36) (hereinafter sometimes referred to as the Federal Act and the Federal Board.)

The other appellee is the Wisconsin Employment Relations Board (hereinafter sometimes referred to as the State Board) administering the Wisconsin Employment Peace Act (hereinafter sometimes referred to as the State Act).

These proceedings originally were commenced before

the State Board, in connection with a labor dispute between the Union and the Company. Prior to May 1939, there had been in force an exclusive bargaining contract between the two, governing the terms and conditions of employment at the Company's plant. As the date for renewal of the contract approached, the Union, pursuant to the terms of the contract, gave notice of cancellation in advance. For three weeks the parties met in an effort to reach a new agreement, but without success. (R. 29, 33) On May 10, 1939, a strike was called by the Union after the employees of the Company had voted by secret ballot ordering such strike. (R. 14)

On or about June 14, 1939, the Company filed a complaint with the Wisconsin Employment Relations Board against the Union and its members charging them with violating the provisions of Sections 111.06 (2) and (3) of the Wisconsin Employment Peace Act. In its prayer for relief, the Company, among other matters, requested "that the Board ascertain and determine which of the members of said union have committed or have been parties to any unfair labor practices, and to declare that such persons are no longer employees of the company, as defined in Section 111.02 (3) (b) of the Wisconsin Statutes." (R. 28–31)

At the hearing the Union objected to the jurisdiction of the State Board. The objections were based on the ground that since the Allen-Bradley Company is engaged in interstate commerce, it is subject exclusively to the provisions of the National Labor Relations Act, that, further, the State Act as applied to interstate commerce is unconstitutional for the reason that it is so inconsistent with, and repugnant to the Federal Act that the two acts cannot consistently stand together insofar as they both constitute regulations of the same subject, namely, labor relations and collective bargaining affect-

ing interstate commerce. All these objections were overruled by the State Board. (R. 37)

After a hearing, the State Board issued an interlocutory order in which it ordered and directed the Union to cease and desist from conducting the strike in a manner contrary to the provisions of the Act. An appeal was taken from this interlocutory order to the Circuit Court of Milwaukee County. The jurisdiction of the State Board was again attacked. The Circuit Court held that there was no conflict between the State and Federal Acts as applied to the case and upheld and confirmed the jurisdiction and the interlocutory order of the State Board. These interlocutory proceedings are not set forth, but only referred to, in the Record. (R. 13, 24)

On February 1, 1940, the State Board entered its "Final Order," containing its findings of fact and conclusions of law. (R. 13–17)

As to the Union, the Board found that it had engaged in certain wrongful acts, which were set forth in the following language:

> "5. That from the beginning of said strike, the Union has engaged in mass picketing at all of the entrances to the factory for the purpose of hindering and preventing the pursuit of lawful work and employment by employees of the Allen-Bardley Company who desired to engage in such lawful work or employment.
>
> 6. That after the commencement of said strike, the Union obstructed and interfered with entrance to and egress from the factory of the company, and obstructed and interfered with the free and uninterrupted use of the streets and sidewalks surrounding the factory of the company.
>
> 7. That the Union, by its officers and many of its members, threatened bodily injury and property

damage to many of the employees desiring to continue their employment with the company.

8. That the Union required of persons desiring to enter the factory without interference that they obtain passes from the Union at its strike headquarters.

9. That the Union, by its officers and many of its members, picketed the domiciles of many employees desiring to continue their employment with the company." (R. 14)

The unlawful acts committed by the individual appellants are set forth in the "Final Order," in the following language:

"11. That Fred Wolters was, prior to the time of the strike, an employee of the Allen-Bradley Company, and president of the Union, and that by threats, force and coercion of other kinds, he attempted to intimidate and to prevent certain employees of the company who desired to continue their employment therein, from pursuing their lawful work and employment.

12. That Esther Kuzmerck, Esther Greenmeier, Sophie Kozcierski, Frances Chandek and Agnes Tanko, were prior to the time of the strike, employees of the Allen-Bradley Company, and that by threats, intimidation, assault and force, attempted to prevent Ruth Batt, an employee of the Allen-Bradley Company, who desired to continue her employment therein, from pursuing such lawful work and employment, and that the said named persons committed an assault and battery upon the person of said Ruth Batt.

13. That Harry Rose and Dan Roknich were, prior to the time of the strike, employees of the Allen-Bradley Company, and that by threats, intimidation, assault and force, attempted to prevent one Marie Rudella, an employee of the Allen-Bradley Company, who desired to continue her employment therein, from pursuing her lawful work and employment.

14. That Tony Calabreesa and Edward O'Kulski, were, prior, to the time of the strike, employees of the Allen-Bradley Company, and that by assault, force and coercion, attempted to prevent one Ann Cycosch, who desired to continue her employment with the Allen-Bradley Company, from pursuing her lawful work and employment.

15. That Peter Blazek, prior to the time of the strike an employee of the Allan-Bradley Company, assaulted one Anton Stamwick, an employee of the Allen-Bradley Company, and by such assault attempted to intimidate said Anton Stamwick and to prevent him from continuing his employment with the Allen-Bradley Company.

16. That Eilif Tompte and Edward Larson, prior to the time of the strike, employees of the Allen-Bradley Company, were arrested and convicted of attempting to damage property belonging to employees of the Allen-Bradley Company, who continued to work for said company during the strike, and that such misdemeanor was committed in connection with the controversy then existing between the company and the Union.

17. That Mike Dembski, prior to the time of the strike an employee of the Allen-Bradley Company, was arrested on the picket line maintained by the Union, armed with concrete rocks, and that said Dembski intended to use such rocks for the purpose of intimidating employees of the company who desired to continue their employment." (R. 14–15)

On the basis of the foregoing findings of fact, the State Board made and entered conclusions of law with reference to the Union and the fourteen appellants. Regarding the Union, the Board ruled as follows:

"1. That the Union is guilty of unfair labor practices in the following respects:

(a) Mass picketing for the purpose of hindering and preventing the pursuit of lawful work or em-

ployment by persons desiring employment by the Allen-Bradley Co.

(b) Threatening employees desiring to pursue their work and employment with the company, with bodily injury and injury to their property;

(c) Obstructing and interfering with entrance to and egress from the factory of the company;

(d) Obstructing and interfering with the free and uninterrupted use of the streets and public roads surrounding the factory of the company;

(e) Picketing the domiciles of employees of the company.

Regarding the individual employees, the Board made and entered the following conclusion of law:

"2. That all the following named employees are guilty of unfair labor practices by reason of threats made by them to other employees, assaults committed by them arising out of the controversy between the Union and the company as described in the findings of fact above: Fred Wolters, Esther Kuzmerck, Esther Greenmeier, Sophie Kozcierski, Frances Chandek, Agnes Tanko, Harry Rose, Dan Roknich, Tony Calabreesa, Edward O'Kulski, Peter Blazek, Eilif Tompte, Edward Larson, and Mike Dembski." (R. 16)

After making the foregoing conclusions of law, the Board issued an "Order" as follows:

"It is ordered that the respondent, Allen-Bradley Local 1111, United Electrical, Radio and Machine Workers of America, its officers, agents, successors, assigns and members, shall:

1. Cease and desist from:

(a) Engaging in mass picketing at or near the plant of the company.

(b) Threatening employees of the company with physical injury, property damage, or otherwise.

(c) Obstructing or interfering with entrance to and egress from the factory of the company.

(d) Obstructing or interfering with the free and uninterrupted use of the streets, public roads and sidewalks surrounding the factory of the company.

(e) Picketing the domicile of any employee of the company." (R. 16–17)

Upon petition to review, the Circuit Court of Milwaukee sustained the final Order of the State Board. (R. 26–29) On appeal, the Wisconsin Supreme Court affirmed the judgment of the Circuit Court thereby sustaining the jurisdiction of the State Board and upholding the constitutionality of the State Act. The Court denied a motion for rehearing. (R. 57)

The substance of our position is that the Wisconsin Employment Peace Act is an unconstitutional attempt on the part of the State of Wisconsin to hamper and obstruct the administration of an orderly national policy with regard to collective bargaining in industrial relations affecting interstate commerce, and, we conclude, the State Board was without jurisdiction to enter the final order, upheld by the state courts.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of the State of Wisconsin erred:

(1) In construing the National Labor Relations Act as not being applicable to the appellants until and unless an order is issued by the National Labor Relations Board in a proceeding before it to which the employer, employees and the Union herein are parties.

(2) In ruling that the final order of the Wisconsin Employment Relations Board finding the fourteen individual appellants herein guilty of unfair labor practices did not deprive said appellants of the protection against employer unfair labor practices and of the right to collective bargaining and

other concerted action for their mutual aid and protection.

(3) In ruling that Sec. 111.02, Subsection 3, (b) of the Wisconsin Employment Peace Act is not in conflict with Section 2, Subsection 3 of the National Labor Relations Act, as applied to the individual appellants in this case and the appellant union, and therefore is void and unconstitutional by reason of such conflict.

(4) In failing to rule that the Wisconsin Employment Peace Act on its face and as construed and applied to the appellants is void and unconstitutional for the reason that the said Wisconsin Act and the National Labor Relations Act are both regulatory of the same general subject matter of employer-employee relations and both regulate collective bargaining relations between employers and employees, and that Congress in enacting the said National Labor Relations Act has preempted the subject covered by said Act in the exercise of its powers to regulate interstate commerce.

(5) In ruling that appellants are without standing to raise constitutional issues arising from the conflict between the two aforesaid federal and state labor relations acts.

(6) In ruling that the Wisconsin Employment Peace Act does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the National Labor Relations Act pursuant to its constitutional power to regulate commerce between the states.

SUMMARY OF ARGUMENT

I.

The federal government in the National Labor Relations Act and related legislation has laid down a policy governing labor relations affecting interstate commerce to the exclusion of any state legislation dealing with precisely the same subject. The assumption of juris-

diction by the Wisconsin Board was done under a State Act dealing with precisely the same aspects of labor relations as the Federal Act. The many decisions of this Court hold that a federal statute on a subject requiring a uniform national policy suspends state legislation, whether conflicting or complementary. The constitutional supremacy of such federal legislation attaches to the action of Congress and not to the action of its agency in a particular case.

The nature of labor relations is such that it requires exclusive federal control. The exercise of the rights guaranteed by Section 7 of the Federal Act can be abridged by subtle and indirect methods of interference. The enforcement of the national labor policy depends upon the evaluation of complex factors in particular cases and a state agency administering a state law modeled in detail after the Federal Act must be given the same discretion as the Federal Board. But this obstructs the development of a uniform national policy because it will inevitably produce diverse results in the same cases.

The present emergency makes more imperative than ever the necessity for a uniform national policy encouraging collective bargaining in labor relations affecting interstate commerce.

II.

The provisions of the Wisconsin Employment Peace Act are repugnant to, and in conflict with, the provisions of the National Labor Relations Act.

A State Act in harmony with the Federal Act may, arguably, be sustained, subject to the supremacy of the Federal Board in particular cases. But obviously, federal laws passed in aid of a granted power supersede state statutes with which they conflict. The Wisconsin

Act conflicts with the Federal Act in several important respects, namely; in the declaration of public policy, the definition of a labor dispute, the rights of a minority to bargain collectively in the absence of a majority, the determination of the appropriate bargining unit, and in the unfair labor practices of employees and unions.

These conflicts show that the entire scheme of the Wisconsin Act is in conflict with the Federal Act. The Federal Act requires violators to engage in collective bargaining through freely chosen representatives, the state act penalizes violators by discouraging collective bargaining as a penalty for the breach of minor police laws.

III.

The order of the State Board upheld by the State Courts is beyond the Constitutional jurisdiction of the State Board. The construction given to the State Board Order and the State Act by the Wisconsin Supreme Court in no wise alters the fact that both the Order and Act deal with precisely the same subject as the Federal Act, and in no wise eliminates the conflicting provisions of the State Act. Under the circumstances of this case, therefore, the State Board lacked jurisdiction to entertain the original complaint of the Company against the appellants.

IV.

The Wisconsin Employment Peace Act is an unconstitutional exercise of the police power of the state. The State Act invades the control embodied in the Federal Act over obstructions to interstate commerce due to industrial disputes. The validity of the entire State Act is raised in these proceedings because the State Board wrongfully took jurisdiction in the first instance

under the basic provisions of the entire State Act. A decision against the constitutionality of the State Act will not prevent the proper exercise of the police power of a state to regulate the aspects of labor relations affecting the good order and peace of the state, and the security of its citizens. But the federal labor policy must be the foundation of any state labor legislation. The states may not undermine that foundation. The Wisconsin Act is an obstacle to the effectuation of the policies of the Federal Act. It is impossible to develop a sound national labor policy if the States are permitted to destroy the practices and procedures of collective bargaining in labor relations affecting interstate commerce protected by federal law.

ARGUMENT

I.

The Federal Government in the National Labor Relations Act and Related Legislation Has Laid Down a Policy Governing Labor Relations Affecting Interstate Commerce to the Exclusion of Any State Legislation Dealing With Precisely the Same Subject.

When this case originally came on for hearing before the State Board, the Company conceded that it was subject to the National Labor Relations Act. The Union then moved to dismiss the proceedings upon the ground of lack of jurisdiction in the State Board. Its motion was denied by the State Board, (R. 36) and that denial subsequently upheld in the state courts. That original determination is the essence of this case, because from that point on, the State of Wisconsin was endeavoring to regulate the subject matter of a valid federal statute.

It can hardly be denied that the Wisconsin Employ-

ment Peace Act deals with precisely the same subject matter as the National Labor Relations Act. The two statutes have corresponding provisions, not only with regard to the rights and duties of employers and employees, but even with regard to administrative procedure and judicial review and enforcement.

Congress in the Federal Act declared the national policy to encourage:

> "the practice and procedure of collective bargaining by protecting the exercise by workers of their full freedom of association and self-organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection."

Section 111.01, Wisconsin Act, declares the public policy of the State of Wisconsin with regard to collective bargaining.

Section 2 of the Federal Act, and Section 111.02 of the State Act contain definitions of persons, employers, employees, representatives, labor organizations, labor disputes, and similar matters. Both acts create an administrative board to enforce the provisions thereof.

Section 7 of the Federal Act is the heart of the National Act, and provides as follows:

> "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 111.04, Wisconsin Act, is the parallel provision and provides as follows:

> "111.04. Rights of Employees. Employees shall have the right to self-organization and the right to

> form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activitives for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities."

Section 8, of the Federal Act, sets forth unfair labor practices of employers. Section 111.08 (1) of the Wisconsin Act lists employer unfair practices.

The two novel additions to the Wisconsin Act, which are nowhere contained in the Federal Act, are Sections 111.06 (2) (a) to (j), which prohibit unfair labor practices by employees, and Section 111.06 (3) which prohibits unfair labor practices by labor organizations.

Section 9 of the Federal Act provides for the designation and rights of representatives and the determination of collective bargaining units. Section 111.05 of the Wisconsin Act also regulates the designation of representatives and the determination of collective bargaining units. Section 10 of the Federal Act grants exclusive authority to the National Labor Relations Board to enforce the provisions of the Act. Section 111.07 sets forth the procedure for the enforcement of the state act by the State Board.

The foregoing references establish that the Wisconsin Act, as much as the Federal Act, is a law governing the precise subject of labor relations and collective bargaining, affecting interstate commerce.

The constitutionality of the Federal Act is no longer open to any challenge. It is a valid exercise of congressional power over interstate commerce. We think it is established that the exercise of the federal power to protect interstate commerce, in a specific way, over a subject requiring national protection excludes any state action, whether it be conflicting or complementary. An

explicit declaration of exclusive authority is not necessary. *Gilvory v. Cuyahoga Valley R. Co.*, 292 U. S. 57, 54 S. Ct. 575. In the case of the National Labor Relations Act, Congress specifically gave exclusive jurisdiction to its agency, the National Labor Relations Board.

Section 10 (a), National Labor Relations Act, reads as follows:

> "Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practices (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

In many decisions, Congressional protection of interstate commerce has resulted in the suspension of state legislation governing the same subject.

In *Erie Railroad Company v. People of the State of New York*, 233 U. S. 671, 34 S. Ct. 756, an action was brought for penalty for alleged violations of a state law regulating employees' hours of labor. The defendant's answer alleged that it was engaged in interstate commerce and that the Federal Hours of Service Act applied and was exclusive; and that, therefore, the State Act was unconstitutional. The defendant was convicted. On appeal, the United States Supreme Court held that Congress had preempted the field of hours of service of employees of railroads engaged in interstate commerce and reversed the decision of the state court. The Court stated, in its decision:

> "Indeed, when Congress acts in such a way as to manifest its power to exercise its constitutional authority, the regulating power of the state ceases to exist." 233 U. S. at p. 681.

See also *Northern Pacific Railroad Company v. State of Washington*, 222 U. S. 370, 32 S. Ct. 170, where a state hours of services law was held unconstitutional for the reason that the Federal Act was exclusive.

In *Southern Railroad Company v. Reid*, 222 U. S. 424, 32 S. Ct. 140, the validity of a North Carolina statute fixing a penalty upon a railroad for failure to accept freight when tendered under certain conditions was challenged. Defendant contended that the statute was unconstitutional because it burdened interstate commerce and conflicted with federal legislation. The court in a unanimous opinion summarized previous decisions respecting the extent and occasion of state regulation of interstate commerce, and stated:

> "It is well settled that if the state and Congress have a concurrent power, that of the state is superseded when the power of Congress is exercised." 222 U. S. at p. 436.

In *Napier v. Atlantic Coastline Railroad Company*, 272 U. S. 605, 47 S. Ct. 207, an appeal was taken from a judgment enjoining the operation of a statute requiring automatic doors for locomotive fire boxes. The railroad contended that the Federal Boiler Inspection Act and Safety Appliances Act occupied the field of regulation of railroad equipment used in interstate commerce, so far as to preclude state legislation on that subject. The Supreme Court of the United States held the state law unconstitutional because federal legislation governed the same subject. The Court declared that the fact that the Interstate Commerce Commission had not seen fit in exercising its authority to impose the same kind of regulations had no bearing on the conclusion that the federal acts had fully occupied the field, thus

precluding state legislation. The Court, through Mr. Justice Brandeis, said:

> "The federal and the state statutes are directed to the same subject—the equipment of locomotives. They operate upon the same object. It is suggested that the power delegated to the commission has been exerted only in respect to minor changes or additions. But this, if true, is not of legal significance. It is also urged that, even if the commission has power to prescribe an automatic fire box door and a cab curtain, it has not done so; and that it has made no other requirement inconsistent with the state legislation. This, also, if true, is without legal significance. The fact that the commission has not seen fit to exercise its authority to the full extent conferred, has no bearing upon the construction of the act delegating the power. We hold that state legislation is precluded, because the Boiler Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the commission led to that conclusion. *Because the standard set by the commission must prevail, requirements by the states are precluded, however commendable or however different their purpose.* . . . If the protection now offered by the commission's rules is deemed inadequate, application for relief must be made to it. The commission's power is ample." (Italics added) 272 U. S. at p. 612.

In *Pennsylvania R. R. Co. v. Public Service Commission*, 250 U. S. 566, 40 S. Ct. 36, the appeal involved a conflict between the Federal Safety Appliance Act and a state law governing the same subject. Mr. Justice Holmes, in reversing the judgment of the State of Pennsylvania, declared:

> ". . . But when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more

can supplement its requirements than they can annul them." 250 U. S. at p. 569.

In the *Charlestown & Western Carolina R. R. Co. v. Varnville Furniture Co.*, 237 U. S. 597, 35 S. Ct. 715, a South Carolina statute relating to the failure of the terminal carrier to promptly pay claims for damage to interstate shipments was held void because it overlapped the federal statute with respect to the subject and grounds and extent of liability for loss. In this case the Court stated:

> ". . . When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." 237 U. S. at p. 604.

In the *Minnesota Rate Case*, 230 U. S. 352, 33 S. Ct. 729, the Court stated:

> ". . . the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations." 230 U. S. at p. 399.

Further in this decision, the Court stated:

> "In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible." p. 403.

In *Second Employers' Liability Cases*, 223 U. S. 1, 32 S. Ct. 169, the Court held that the Employers' Lia-

bility Act of April 22, 1908, as amended by the Act of April 5, 1910, regulating the liability of common carriers by railroad to their employees, also held to supersede laws of the several states insofar as they covered the same field. The Court stated:

> "True, prior to the present act the law of the several States were regarded as determinative of the liability of employers engaged in interstate commerce for injuries received by their employees while engaged in such commerce. But that was because Congress, although empowered to regulate that subject, had not acted thereon, and because the subject is one which falls within the police power of the States in the absence of action by Congress. (Citing cases). The inaction of Congress, however, in no wise affected its power over the subject. (Citing cases) And now that Congress has acted, the laws of the States, insofar as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is." (citing cases) 223 U. S. at pp. 54–55.

The Wisconsin Supreme Court has itself construed the State act to deal with the same subject as the Federal Act. It said:

> "The National Labor Relations Act deals with labor relations only as a means of protecting interstate commerce. The Employment Peace Act deals with labor relations in the exercise of the police powers of the State." (R. 48)

The major premise to its upholding of the State Act, is that

> "The action of Congress leaves to the state full authority to deal with labor relations generally." (R. 49)

But this premise overlooks the fact that the Wisconsin Act specifically and expressly deals with the same aspects of labor relations as the Federal Act.

Both deal with employer interference with rights of employees to organize, both define the employment relations for the purpose of collective bargaining, both define the bargaining unit, and both establish the duty to bargain collectively.

We do not say that Wisconsin may not legislate upon the incidents of the employment relation as they relate to peace, morals, health, good order and general welfare —the objectives embraced within the police powers of a state. We do not say that Wisconsin may not punish, by proper civil or criminal measures, breaches of peace, disorder or acts of force or violence. On the contrary, Wisconsin has adequate powers to do so. It can send strikers to jail for disorderly conduct, unlawful assembly, or riot. But it *may not* require compliance with minor regulations of the police powers as a condition to the exercise of the rights of workers to collective bargaining and the employee status for the purpose of collective bargaining. It may not, in the name of the police power, provide for the regulation of collective bargaining in labor relations which affect interstate commerce when Congress has assumed to regulate the very same aspects of those relations.

It is no answer to say that the State Board may act in the absence of action by the Federal Board. The constitutional supremacy of federal regulation attaches to the action of Congress and not to the action of its delegated agency in particular cases.

In the case of *NLRB v. Newport News Shipbuilding & Drydock Company*, 308 U. S. 241, 60 S. Ct. 246, the company had urged that the company union had operated to the apparent satisfaction of employees since serious labor disputes had not occurred during its existence;

"... and as the men at an election held under the auspices of the Committee had signified their desire

for its continuance, it would be a proper medium and one which the employer might continue to recognize for the adjustment of labor disputes. The difficulty with the position is that the provisions of the statute preclude such a disposition of the case. The law provides that an employee organization shall be free from interference or dominance by the employer. We cannot say that, upon the contradicted facts, the Board erred in its conclusions that the purpose of the law could not be attained without complete disestablishment of the existing organization which had been dominated and controlled to a greater or less extent by the respondent. *In applying the statutory test of independence it is immaterial that the plan had, in fact, not engendered, or indeed had obviated, serious labor disputes in the past, or that any company interference in the administration of the plan had been incidental rather than fundamental and with good motives.* It was for Congress to determine whether, as a matter of policy, such a plan should be permitted to continue in force. We think the statute plainly evinces a contrary purpose, and that the Board's conclusions are in accord with that purpose." 308 U. S. at p. 251. (Italics added)

In *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615, the Court stated:

"The fact that there appears to have been no major disturbance in that (steel) industry in the more recent period did not dispose of the possibilities of future and like dangers to interstate commerce which Congress was entitled to foresee and to exercise its protective power to forestall." 301 U. S. 1 at p. 43.

In *NLRB v. Fainblatt*, 306 U. S. 601, 59 S. Ct. 668, the Court stated:

"The Act on its face thus evidences the intention of Congress to exercise whatever power is constitu-

tionally given to it to regulate commerce by the adoption of measures for the prevention or control of certain specified acts—unfair labor practices—which provoke or tend to provoke strikes or labor disturbances affecting interstate commerce. . . ." 306 U. S. at p. 607.

Further:

". . . It is no longer open to question that the manufacturer who regularly ships his product in interstate commerce is subject to the authority conferred on the Board with respect to unfair labor practices whenever such practices on his part have led or tend to lead to labor disputes which threaten to obstruct his shipments. (Numerous authorities cited.)" 306 U. S. at p. 608.

In *Consolidated Edison Company v. NLRB*, 305 U. S. 197, 59 S. Ct. 206, this Court said:

"But it cannot be maintained that the exertion of federal power must await the disruption of that commerce. Congress was entitled to provide reasonable preventive measures, and that was the object of the National Labor Relations Act." 305 U. S. at p. 221.

The necessity for uniform federal legislation on collective bargaining is apparent. The National Labor Relations Act is only part of a whole legislative program that includes as well such safeguards of collective bargaining as the Norris La Guardia Anti-Injunction Act, the Wage-Hour law and the Walsh-Healey Act. See *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 498, 60 S. Ct. 982, 998, n. 24.

Labor relations are of such a nature that exclusive control over those affecting interstate commerce is essential to the enforcement of the federal labor relations Act. This Court has recognized that the freedom of

employees to enjoy industrial democracy, guaranteed by the Act, can be destroyed by subtle coercion and frustrations. Thus, in the case of *International Association of Machinists v. NLRB*, 311 U. S. 72, 61 S. Ct. 83, this Court upheld an order of the Board against employer interference, saying:

> "Slight suggestions as to the employer's choice between unions may have telling effects among men who know the consequences of incurring that employer's strong displeasure." (311 U. S. at p. 78)

And in the case of *NLRB v. Link Belt Co.*, 311 U. S. 584, 61 S. Ct. 358, this Court reviewed the evidence of employer interference, and said:

> "The fact that these various forces at work were subtle rather than direct does not mean that they were nonetheless ineffective. Intimations of an employer's preference, though subtle, may be as potent as outright threats of discharge." (301 U. S. at p. 599)

This Court has recognized that even oral utterances by an employer can produce a coercive interference with the rights guaranteed by the Federal Act. *NLRB v. Virginia Electric & Power Co.*, decided December 22, 1941, 314 U. S.—.

In the same way, this Court has upheld the necessity for the disestablishment of company-dominated labor organizations in order to wipe the slate clean.

H. J. Heinz Co. v NLRB, 311 U. S. 514, 61 S. Ct. 320.

NLRB v. Newport News Shipbuilding & Drydock Co. supra.

NLRB v. Link-Belt Co. supra.

The action of a state agency dealing with labor relations covered by the Federal Act can and does result in the same interference as employer action. The notorious Mohawk Valley formula to break strikes and destroy

unions relied most heavily upon the use of local laws to brand the union and its members as outlaws.

Republic Steel Corp. v. NLRB, 3 Cir., 107 F. (2d) 472, 476.

Bethlehem Steel Co. v. NLRB (App. D. C.) 120 F. (2d) 641.

NLRB v. Remington-Rand, 2 Cir., 94 F. (2d) 862, affirming except for minor modifications, 2 NLRB 626, 664.

Rosenfarb, *op. cit. supra*, p. 95.

Surely this Court is aware of the reality that a decision by the State Board which discourages collective bargaining has a repressive effect upon the employees in a particular case. It is not enough to say that the remedies of the Federal Act remain available to the employees to afford them such protection as is proper in the premises. The damage is done by the decision of the State Board, and the seeds of industrial strife are sown.

In the case at bar, a group of workers, exercising their right to collective bargaining and other mutual aid and protection, went on strike when negotiations for a new agreement broke down. The State Board has branded them as outlaws under a state labor relations act, and subjected them to the forfeiture of their collective bargaining rights. How can it be said that these employees are to understand that "it is only for the purposes of the State Act", that they are still entitled to all their rights under the Federal Act, and that, therefore, their exercise of rights guaranteed by the Federal Act has not been subject to any interference. How can it be said that the policy of the Federal Act has been in no wise seriously impeded.

A further example of the obstruction presented to the effectuation of the Federal Act, even by identical provisions of the State Act, is furnished by the recent case

of *NLRB v. Algoma Net Company*, 7 Cir. decided Dec. 9, 1941, 9 L. R. R. 450. In that case an employer, charged with unfair discriminatory discharges under Section 8 (3) of the Federal Act, insisted that the Wisconsin Board had taken jurisdiction in earlier proceedings and "closed" the matter. It appeared that the representative of the Wisconsin Board had advised the employer "to forget about the whole thing" so far as reinstating certain employees was concerned. The Federal Board, however, granted reinstatement to these employees. The Circuit Court of Appeals was not called upon to decide the constitutionality of the Wisconsin Act. It did hold that the Federal Board had jurisdiction and that its decision superseded any decision of the State Board.

The Federal Order was not issued until a year and a half after the discharges took place and the State Board "closed" the matter. (28 NLRB No. 18). It was not upheld by the Court until two and a half years later. In the interim, the force of the disposition by the Wisconsin Board denying reinstatement was added to the employer's commission of the unfair labor practice. True, the employees concerned eventually were afforded the protection of the Federal Act. But for a two-year period, the Wisconsin Act discouraged collective bargaining and obstructed the policy of the national government in labor relations affecting interstate commerce.

We know that the enforcement of a labor relations law must leave "the detection and appraisal of imponderables to the essential function of an expert administrative agency." *International Association of Machinists v. NLRB, supra.* One of the principal features of the judicial enforcement of the Federal Act has been the full discretion given to the Board to make decisions in particular cases which will effectuate the

policies of the Act. *NLRB v. Waterman Steamship Corp.* 309 U. S. 206, 60 S. Ct. 493. It is obvious that a state agency administering a state law modeled in detail upon the federal law must be given the same administrative function. And it also follows that such a state agency will reach different results from the Federal Board in the same cases. Accordingly, it seems to us that the nature of the administration of a labor relations act requires that the Federal Act be given pre-empting authority in order to maintain a uniform national labor policy.

The present emergency has made more imperative than ever before the necessity for a uniform national policy on labor relations. To permit the states to regulate the same subject would be to provide for confusion of legal authority and practical results. The federal government has declared a public policy in favor of collective bargaining through freely chosen representatives in order to eliminate any obstruction to interstate commerce. The war has reinforced that policy as essential for uninterrupted defense production as well. The National Labor Relations Act sets up the foundation upon which collective bargaining institutions and practices may be erected. It is basically a simple foundation: employees shall have the right to choose their own representatives without interference by employers, they shall have the right to organize, to bargain collectively, to other concerted action for their mutual aid and protection. To implement its policy, the federal government has in the Act, defined such elements of collective bargaining as the employer-employee relationship, the labor dispute, the unit appropriate for collective bargaining, and the nature of exclusive representation. The Wisconsin Act, in the name of the police power, purports to deal with precisely the same elements of collective bargaining in

labor relations subject to the Federal Act. The Wisconsin Act is an invasion of the federal power.

We do not think it is material here whether the regulations of the Wisconsin Act are in harmony or in conflict with the Federal Act. In the case of *Hines v. Davidowitz*, 312 U. S. 52, 61 S. Ct. 399, the provisions of the Pennsylvania Alien Registration Act were concededly consistent with those of the federal law on the same subject. But this Court held that the very similarities which obviated any conflict in policy, produced a duplication by the state authority that would necessarily impede the operation of the federal law. This Court laid down the following rule:

> "And where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations. There is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: Conflicting, contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (312 U. S. at p. 66)

We think the case at bar is governed by the same principle and compels the same result as was reached in the Hines case.

II.

The Provisions of the Wisconsin Employment Peace Act Are Repugnant to and in Conflict with the Provisions of the National Labor Relations Act.

We have urged that the enactment of the Federal Act regulating labor relations affecting interstate commerce excluded any state legislation of the same type on the same relations. Our insistence is based upon the conviction that national production essential to the defense of the nation requires a uniform national labor policy to prevent interruptions to production. It might be argued that states may enact labor relations laws which are in harmony with the federal law. But even in such a case, the paramount jurisdiction of the Federal Act would be recognized and the State Act could not in any way impair the operation of the Federal Act.

Thus, in *Consolidated Edison Company, v. NLRB supra*, this Court held that the validity of the New York State Act was not before it, but it added:

> "The State Act, with added details, follows closely the National Act. The State Act provides for collective bargaining, including the conduct of elections to determine the representation of employees, and empowers the State Labor Relations Board to prevent unfair labor practices. In seeking to avoid a clash with Federal authority, the State Act is made inapplicable 'to the employees of any employer who concedes to and agrees with the Board that such employees are subject to and protected by the provisions of the National Labor Relations Act or the Federal Railway Labor Act.' It is manifest that the enactment of this State law could not override the constitutional authority of the Federal government. The State could not add to or detract from that authority." (305 U. S. at p. 223)

The New York Court of Appeals upholding the State Labor Relations Act, nevertheless recognized the supremacy of the Federal Act. It said:

> "We may further assume that the police power of the State would warrant the application of the State Labor Relations Act to the labor relations of appellant if the National Labor Relations Act were not in existence (*Minnesota Rate Cases*, 230 U. S. 352, 408). On the other hand, it has long since been settled that where there is a *conflict* between a statute enacted by Congress pursuant to its delegated powers, *e.g.*, the regulation of interstate and foreign commerce, and a law adopted by a State in the exercise of its police power, then the former prevails. (*Gibbons v. Ogden*, 9 Wheat. [U. S.] 1). If effect were given to the contrary directions of the State law, then the National act would no longer be the supreme law of the land, as is required by Article VI of the Constitution." *Davega City Radio v. State Labor Relations Board*, 281 N. Y. 13, 21, 22 N. E. (2d) 145, 147.

Moreover, the New York State Act specifically provides that its provisions shall not apply to:

> "The employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the National Labor Relations Act or the Federal Railway Labor Act . . ." (N. Y. Consol. Laws. Labor Law, Art. 20, Sec. 715.)

The recently enacted Rhode Island Act contains the same provision as this paragraph and is also modeled in detail upon the Federal Act. (Rhode Island Acts (Jan. 1941) c. 1066, Sec. 16)

The Wisconsin Act, upheld in *Reuping Leather Co. v. Wisconsin Labor Relations Board*, 228 Wis. 473, 279 N. W. 673, was then modeled in detail upon the Federal Act. The Massachusetts Act specifically provides that it is not applicable to "any unfair labor practice subject to the National Labor Relations Act."

[Mass. Acts, 1937 c. 436, Sec. 14 (b), IV Mass. Ann. Laws. Supp. (1941) c. 150 A., Sec. 10 (b)]

The Pennsylvania Act, which does have certain differences, defines the term "employer" to exclude any employer subject to the Federal Act. [43 Purdon's Pa. Stat. Sec. 211.3 (c)] See *Abbots Dairies Case*, 341 Pa. 145, 19 A. (2d) 128

The Utah Act, which is modeled in detail upon the Federal Act, defines its terms so that it applies only to intrastate commerce. Utah Rev. Stat. Supp. (1939) Title 49, c. 1, Secs. 49-1-1, 49-1-3 (6) (7), 49-1-11.

The Wisconsin Act is in conflict with the Federal Act in many important respects.* It follows that the Wisconsin Act must be declared invalid. In *Kelly v. Washington*, 302 U. S. 1, 58 S. Ct. 87, this Court declared:

> "The principle is thoroughly established that the exercise by the State of its police power which would be valid if not superseded by Federal action is superseded only where the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently stand together."

And Mr. Chief Justice Stone in the *Hines* case said:

> "Federal statutes passed in aid of granted power obviously supersede state statutes with which they conflict." (312 U. S. at p. 79.)

The area of this conflict between the two labor relations Acts embraces the vital elements of each. In sum, the Federal Act seeks to protect interstate commerce from interruptions due to industrial strife by encouraging collective bargaining; the State Act discourages collective bargaining in labor relations affecting interstate commerce, and so stands as an obstacle to the operation of the Federal Act.

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* The Minnesota Act, like the Wisconsin Act, contains unfair labor practices by employees, provides for the issuance of cease and desist orders against such practices, and the denial of collective bargaining rights. Mason's, Minn. Stat. 1940 Supp. Secs. 4254-21-40, as amended, 1941 Supp. Secs. 4254-21-36.

It is idle to contend that Congress did not, in the Federal Act, regulate labor relations, but only interstate commerce. The Wisconsin Supreme Court, we respectfully submit, has failed to perceive that the protection of interstate commerce embraces labor relations affecting interstate commerce. There is no difference, under the policy and provisions of the National Labor Relations Act, between labor relations on a boat moving down the Mississippi River and labor relations in an industrial plant in Wisconsin.

So, in the *Jones & Laughlin* case, this Court said, after referring to the large measure of success of the labor policy embodied in the Railway Labor Act:

> "But with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy from the case of employees of transportation companies. And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported!" 301 U. S. at p. 42. See, Rosenfarb, *op. cit. supra, Ch. XIV*.

What then are the conflicts between the Wisconsin Act and the Federal Act regulating interstate commerce?

(1) Conflict in declaration of public policy.

The Federal Act declares the public policy, with regard to labor relations, of the Federal government to be the encouragement of the practice and procedure of collective bargaining. The public policy set forth in Section 111.01 of the Wisconsin Act omits any positive declaration in favor of promoting collective bargaining. The Wisconsin Act provides that the activities of workers to induce fellow workers to join a union and bargain

collectively as equally wrongful as is the coercion exercised by an employer to prevent employees from self-organization and collective bargaining. Sec. 111.06 (2) (a) Wis. Act. (Appendix 55–56).

The Congressional committees which considered the Wagner-Connery Bill, which later became the National Labor Relations Act, expressly refused to include provisions against coercion of employees by employees or labor organizations. (*infra*, p. 39)

The importance of the declaration of public policy to the effectuation of the purposes of the Federal Act cannot be underestimated. It has furnished a fundamental guide to the interpretation and enforcement of the Federal Act in each of its provisions.

The declaration of policy has served to establish the fundamental concept of the exercise of the interstate commerce power upon which the validity of the Act rests, *NLRB v. Jones & Laughlin, supra*; to define the limit of the exemption for agricultural employees, *North Whittier Heights Citrus Assn. v. NLRB*, 9 Cir., 109 F. (2d) 76, cert. den. 311 U. S. 72, 61 S. Ct. 54; to determine the extent of the remedial powers of the Board, *Republic Steel Corp. v. NLRB*, 311 U. S. 7, 61 S. Ct. 77; to define company-dominated labor organizations, *NLRB v. Newport News Ship Building & Drydock Co.*, 308 U. S. 241, 60 S. Ct. 246; to define the duty of bargaining collectively and reducing agreements to writing, *Heinz & Co. v. NLRB*, 311 U. S. 514, 61 S. Ct. 320; to ascertain the appropriate bargaining unit, *NLRB v. Pittsburgh Plate Glass Co.*, 313 U. S. 146, 61 S. Ct. 908; to define interference, restraint and coercion, *International Association of Machinists v. NLRB*, 311 U. S. 72, 61 S. Ct. 83; and to define discrimination in regard to employment, *Phelps-Dodge Corp. v. NLRB*, 313 U. S. 177, 61 S. Ct. 845.

Indeed, it can be said of the National Labor Relations Act, that its declaration of policy has perhaps been of more significance than in the case of any other legislation in recent times. There is hardly a case of any importance under the Act which has not leaned heavily upon the declaration of policy to reach its decision. Rosenfarb, *op. cit. supra* Ch. II, National Labor Relations Board, *Second Annual Report* (1937) p. 4. And the reason may well lie in the fundamental character of the legislation.

By its conflicting declaration of policy, the Wisconsin Act opposes the basic conception of the Federal Act. This conflict destroys even the harmony between the other provisions of the two acts which may be in substantial conformity, because it conditions the Wisconsin Act to a conflicting interpretation and enforcement. It makes the State Act a persistent obstacle in the way of a uniform national labor policy.

Hines v. Davidowitz, supra
Savage v. Jones, 225 U. S. 501, 32 S. Ct. 715

(2) Conflict as to definition of a labor dispute.

Under Section 2 (3) of the Federal Act, a labor dispute is defined as including:

> ". . . any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate regulation of employer and employee."

The Wisconsin Act, however, defines a labor dispute as meaning:

> ". . . any controversy between an employer and *the majority of his employees* in a collective bar-

> gaining unit concerning the right or process of details of collective bargaining or the designation of representatives. . . ." Sec. 111.02 (8) (Italics added) (Appendix 58)

It is an unfair labor practice for employees to strike unless a majority in the collective bargaining unit of the employees or an employer against whom said acts are directed have voted by a secret ballot to call a strike. Sec. 111.06 (2) (e) (Appendix 66)

This ruling has been confirmed by decision of Wisconsin Circuit Court in *W. E. R. B. v. Milk & Ice Cream Drivers Union*, decision by Circuit Court of Milwaukee County, August 1, 1940, affirming "Final Order" of the Wisconsin Board in *Golden Guernsey Dairy Cooperative v. Union*, reported in 3 CCH Labor Law Service, par. 60,049, affirmed on appeal, 229 N. W. 31.

Under the Federal Act, strikers, regardless of their majority status, are protected from employer unfair labor practices and retain their right as employees to vote for the bargaining agency. Under the State Act, these rights are terminated.

The conflict is sharply outlined by the ruling of this Court in the case of *Mackay Radio & Telegraph Co. v. NLRB.*, 304 U. S. 333, 58 S. Ct. 904, when this Court said:

> "The strikers remained employees under Section 2 (3) of the Act, 29 U. S. C. Sec. 152 (3) which provides that 'the term employee shall include . . . any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute.' . . . Within this definition the strikers remained employees for the purpose of the Act and were protected against the unfair labor practices denounced by it." (304 U. S. at p. 345)

See, *Christian Lund v. Woodenware Workers' Union*, 19 F. Supp. 607.

And the Senate Report on the Federal Act stated:

> "Recognition that strikers may retain their status as employees has frequently occurred in judicial decisions. To hold otherwise for the purposes of this bill would be to withdraw the government from the field at the very point where the process of collective bargaining has reached a critical stage and where the public interest has mounted to the highest point." (Sen. Rept. 573, 74th Cong., 1st Sess. p. 6.)

(3) Conflict as to rights of minority to bargain collectively.

Under the Federal Act, an employer has a legal privilege to bargain collectively with the representatives of a minority of his employees if at the time there is not a rival union representing the majority. *Consolidated Edison Company v. NLRB, supra.* Under the specific provisions of Section 111.06 (1) (e) of the Wisconsin Act, the employer is guilty of an unfair labor practice if he bargains collectively with the representatives of a minority of his employees, even though, at the time, there is no rival union representing the majority. (Appendix 64)

This express provision is repugnant to the rights recognized under the Federal Act of employees to engage in collective bargaining even though they do not constitute a majority, and the policy of the Federal Act to encourage collective bargaining. Rosenfarb, *op. cit. supra*, pp. 238–241.

(4) Conflict as to appropriate bargaining unit.

Under Section 9 (b) (c), Federal Act, Congress left to the National Labor Relations Board the duty to determine what, in any particular case, should be the appropriate bargaining unit for purposes of collective bargaining. (Appendix 67) The Board may, in its discre-

tion, determine whether the unit shall be the "employer unit, craft unit, plant unit, or bus division thereof." *American Federation of Labor v. NLRB*, 308 U. S. 401, 60 S. Ct. 300.

Section 111.02 (6), Wisconsin Act, provides that a collective bargaining unit means:

> "all of the employees of one employer, except that where a majority of such employees engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in Section 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered." (Appendix 58)

The difference between the provisions as to bargaining units is commented on by the Wisconsin Supreme Court in *Metropolitan Life Ins. Co. v. Wis. Labor Relations Board*, 237 Wis. 464, 297 N. W. 430, in considering changes in the 1939 Wisconsin Act from its 1937 predecessor, on this subject.

Thus, on the vital issue of the appropriate collective bargaining unit the two acts are repugnant. The State Act compels the establishment of craft units when desired by a majority in a craft without regard to any and all other circumstances.

In *Creamery Package Manufacturing Co.*, Case No. 348–E–117, June 23, 1941, reported in Vol. 8 L.R.R. p. 866, the State Board ruled that it may hold an election to determine bargaining representatives even though proceedings are pending before the Federal Board, and may, further, direct an election based on a bargaining unit other than the one set up by the Federal Board.

The State Board stated:

> "Even though such right had not been waived, we would still hold, where no certification has been made by the National Labor Relations Board, prior

to the filing of the petition with the Wisconsin Board, that we not only have a right to order such an election but are bound to do so. . . .

"The fact that a subsequent election may be held by the National Labor Relations Board and that a different result may be obtained does not seem to us to be of any particular importance."

But, we submit, the matter is one of considerable importance, *Pittsburgh Plate Glass Co. v. NLRB, supra.* An impossible situation arises if the Federal Board establishes an industrial plant-wide collective bargaining unit and the State Board in the same plant establishes several craft bargaining units. Such a conflict could not possibly be reconciled and the procedure of collective bargaining would be obstructed by the conflicting bargaining units and proceedings. In the case of a company with integrated operations covering many states, a confusion of bargaining units would seriously tend to obstruct interstate commerce. *Jones & Laughlin* case, *supra*, 301 U. S. at pp. 25–27, 43.

Furthermore, in these days of national emergency, the policy of the Act to encourage collective bargaining will require the constant extension of collective bargaining on a national industry-wide scale.

See *Report of Commission on Industrial Relations in Great Britain* (1938) U. S. Dept. of Labor, p. 4.

Report of Commission on Industrial Relations in Sweden (1938) U. S. Dept. of Labor, p. 4.

The Wisconsin Act in its conflicting determination of the bargaining unit obstructs the development of a vitally important element in a national labor policy.

(5) Conflict over the unfair labor practices of employees and unions.

One of the major conflicts between the federal and state act rests in the effect of unfair labor practices on the part of employees and unions. The scheme of

the Wisconsin Act is that employees and unions may forfeit their rights to collective bargaining if they breach the public order of the State. So the Wisconsin Act in Section 111.06 (2) (a)—(j) inclusive, contains provisions defining so-called unfair labor practices by employees. (Appendix 65–66) The individual appellants were found to have violated these provisions. Similarly, the same practices may be charged to a labor organization, and the appellant union has been found guilty of violating these prohibitions. The Wisconsin Act does not, however, merely provide that employees and unions shall not engage in such practices. It goes further.

As to individuals who violate these provisions, it authorizes the termination of the employment relation by excluding them from the definition of employee. Section 111.02 (3) of the Act defines an employee as follows:

> "The term 'employee' shall include any person other than an independent contractor, working for another for hire in the State of Wisconsin . . . who has not been found to have committed or to have been a party to any unfair labor practice hereunder. . . ." (Appendix 57)

Unions which commit unfair labor practices may be prohibited from acting as collective bargaining agents for a period up to one year. Section 111.07 (4) provides:

> "Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights, immunities, privileges, or remedies granted or afforded by this chapter for not more than one year, and require him to take such affirmative action, including reinstatement of employees with or without pay, as the Board may deem proper." (Appendix 71)

The Wisconsin Act therefore uses the loss of collective bargaining rights as a penalty for the violation of local police laws.

On the other hand, the federal law has no such provisions at all. The effectuation of its policy requires directly conflicting regulations.

First. The Federal Act explicitly omitted any unfair labor practices by employees and unions in the regulation of collective bargaining. It was done so advisedly. The House Labor Committee in its report on the Federal Act stated:

> "Objection is constantly made that the bill is limited to unfair labor practices by employers. It is contended that the bill should prohibit 'anyone (including, of course, an employee or labor organization) from interfering with, restraining or coercing employees in the exercise of these rights, and that without such provision, the bill is 'unfair' 'one-sided' and would lead to the domination of industry by organized labor. But is clear that corresponding to the right of employees to be free from interference, etc., by their employer in their organizational activities, is the right of the other party to the negotiations, the employer, to be free in his designation of representatives for that purpose. The Railway Labor Act contains such a reciprocal provision that neither employers nor employees shall in any way interfere with, influence or coerce the other in their choice of representatives (Sec. 3) but does not deal with organizational activities by employees or labor organizations. Such a reciprocal provision, forbidding employees to interfere with the right of employers to choose their own representatives for collective bargaining, would be a merely formal requirement, ignoring the realities of the situation. In the light of common knowledge, it can hardly be said that this right of employers needs protection under this bill. Organizations of employers in trade associations and in national organizations of such trade associations have blanketed the country; the integration of business into larger corporate units and the formation of such trade associations has not been stopped by the antitrust laws.

"Furthermore, a provision forbidding employees to interfere with the right of employers to choose their representatives would not satisfy the opponents of the bill. What is really sought is a legal strait-jacket upon labor organizations, on the specious theory that such organizations have no more legitimate concern in the organization of employees than have the employers themselves. But the bill seeks to redress an inequality of bargaining power by forbidding employers to interfere with the development of employee organization, thereby removing one of the issues most provocative of industrial strife and bringing about a general acceptance of the orderly procedure of collective bargaining under circumstances in which the employer cannot trade upon the economic weakness of his employees." (H. Rept. No. 1147, 74th Cong. 1st Sess. p. 16)

This Court has recognized the absence of any such provisions as a deliberate feature of congressional policy. In the *Jones & Laughlin* case, supra, it said:

"The Act has been criticized as one-sided in its application; that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be responsible. That it fails to provide a more comprehensive plan, with better assurance of fairness to both sides and with increased chances of success in bringing it about, if not compelling equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step', in dealing with the evils which are exhibited in activities within the range of legislative power. *Carroll v. Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co. v. Taylor*, 234 U. S. 224, 227;

Miller v. Wilson, 236 U. S. 373, 384; *Sproles v. Binford*, 286 U. S. 374, 396. The question in such cases is whether the legislature in which it does prescribe, has gone beyond constitutional limits." (301 U. S. 1 at p. 46.).

And the rule is well established that

"If Congress has a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provision made by it." (*Priggs v. Pennsylvania*, 16 Pet. 539.)

Second. Judicial decisions upholding rulings of the federal board have established that the employee status for purposes of collective bargaining continues regardless of minor acts of disorder.

One of the most fiercely argued issues in the administration of the Federal Act was this very question. In the case of *NLRB v. Stackpole Carbon Co.*, 105 F. (2d) 167, cert. den. 308 U. S. 605, 60 S. Ct. 142, the Third Circuit Court of Appeals said:

"We cannot conclude that rights given to employees under the National Labor Relations Act are destroyed because of violence of a type as common to labor disputes as a fist-fight upon a picket line." 105 F. (2d) at p. 176.

Similarly in the case of *Carlisle Lumber Co., v.*

NLRB, 99 F. (2d) 533, 540, the Ninth Circuit Court of Appeals, said:

> "Respondent again contends that reinstatement and back pay should not be awarded because the men in question committed acts of violence and do not, therefore, have clean hands. We answered that contention in the prior decision by the statement that—'It is not the union but the Board which is seeking enforcement.' 94 F. (2d) 138, 146. What I have said regarding the purpose of the Act is also applicable here, and requires the conclusion that the penalty is not controlled by equity. See, also, National Labor Relations Board v. Remington-Rand, Inc. (CCA) 94 F. (2d) 862, 872; Senate Committee on Education and Labor, Report No. 595, 74th Congress, p. 15. . . . Since the Supreme Court has said that 'reinstatement of the employees and payment for time lost are requirements imposed for violation of the statute' (Jones & Laughlin v. Labor Board, 301 U. S. 1, 48). It would seem that we should consider such orders in the nature of penalties and free from the application of the equitable defense suggested.

In the *Republic Steel* case, 107 F. (2d) 472, affirming 9 NLRB 219, except for modifications in other respects, 311 U. S. 7, 61 Sup. Ct. 77, the policy was explained as follows:

> "In the Fansteel case the Court was dealing with a case which involved a sit-down strike in which the strikers forcibly and unlawfully deprived their employer of possession of his plant. The Court made it clear that unlawful conduct of that character deprived the participant of the right of reinstatement. We think it must be conceded, however, that some disorder is unfortunately quite usual in any extensive or long drawn out strike. A strike is essentially a battle waged with economic weapons. Engaged in it are human beings whose feelings are stirred to the depths. Rising passions call forth

hot words. Hot words lead to blows on the picket line. The transformation from economic to physical combat by those engaged in the contest is difficult to prevent even when cool heads direct the fight. Violence of this nature, however much it is to be regretted, must have been in the contemplation of the Congress when it provided in Sec. 13 of the Act that nothing therein should be construed so as to interfere with or impede or diminish in any way the right to strike. If this were not so the rights afforded to employees by the Act would be indeed illusory. We accordingly recently held that it was not intended by the Act that minor disorders of this nature should deprive a striker of the possibility of reinstatement. National Labor Relations Board v. Stackpole Carbon Co., supra." 107 F. (2d) at p. 479

The same problem arises with regard to unions under the two acts. In *NLRB v. Remington-Rand, Inc.*, 2 Cir., 94 F. (2d) 862, 873, the Court stated:

"Though the union may have misconducted itself, it has a locus poenitentiae. If it offers in good faith to treat, then the employer may not refuse because of its past sins."

In *Kuehne Mfg. Co.* case, 7 NLRB 304, the Federal Board stated:

"The Act imposes an unconditional duty upon the employer to bargain collectively with representatives designated by a majority of his employees in an appropriate bargaining unit. If we assume that the strikers interfered with the movement of respondent's property, their misconduct, for which appropriate remedies exist under State laws, does not justify respondent in ignoring Federal law by its refusal to bargain collectively with the Union." 7 NLRB at p. 321

But under the Wisconsin Act, a union whose members have been found guilty of minor acts of misconduct may forfeit its status as collective bargaining representative,

though it has been duly selected as the majority representative under the provisions of the Federal Act.

The case of *NLRB v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 59 S. Ct. 490, does not protect the Wisconsin Act. On the contrary, the *Fansteel* case shows the relation between the Federal Act and the State Act. The Federal Board order in the *Fansteel* case was invalid because, according to the decision of this Court, it impaired the preservation of local order to promote collective bargaining.

So this Court said:

> "We repeat that the fundamental policy of the act is to safeguard the rights of the self-organization and collective bargaining and thus, by the promotion of industrial peace, to remove obstructions to the free flow of commerce as defined in the Act. There is not a line in the statute to warrant the conclusion that it is any part of the policies of the act to encourage employees to resort to force and violence in defiance of the law of the land. On the contrary, the purpose of the act is to promote peaceful settlements of disputes by providing legal remedies for the invasion of the employees rights." (306 U. S. at p. 257)

See *The Fansteel Case, Employee Misconduct and Remedial Powers of the NLRB*, 52 Harv. L. Rev. 1275.

On the same principle, though in the opposite way, the Wisconsin Act is invalid because it violates collective bargaining in order to protect public order. To paraphrase the *Fansteel* holding, the State Act encourages the resort to industrial strife obstructing interstate commerce by destroying collective bargaining relations, and this cannot be deemed any part of the purpose of the state police power.

The conflicts between the two acts boil down to one essential point: the policy of the Federal Act is to require perfected collective bargaining for the breach of its provisions; whereas the policy of the State Act is to require the forfeiture of collective bargaining rights as a penalty for the breach of its provisions. Where the Federal Act requires employers who have committed unfair labor practices to cease and desist therefrom and to accept collective bargaining through freely chosen representatives of their employees, the State Act requires, as a penalty, employees who have violated local police laws to forego collective bargaining privileges and rights.

We do not see how the state can so undermine federal collective bargaining rights any more than it could require a forfeiture of the rights of employees to social security benefits, or to the protection of the Wage-Hour law, the Public Contracts Act, or the Railway Labor Act.

The Wisconsin Employment Peace Act stands as an obstacle to the effectuation of the policies of the Federal Act.

III.

The Order of the Wisconsin Employment Relations Board, Upheld by the State Courts, Is Beyond the Constitutional Jurisdiction of the State Board.

When the State Board took jurisdiction of this case, despite the objections of the appellant, it assumed to deal with matters that were the subject of the exercise of constitutional powers by Congress. The State Act authorized the Board to deprive the individual appellants of their employee status for the purposes of collective bargaining. It authorized the Board to deprive the Union of its capacity to act as an exclusive collective bargaining representative for a period up to one year.

The company's complaint prayed among other things that the individuals guilty of unfair labor practices be declared no longer employees of the Company as defined in Section 111.02 (3) (b) of the Wisconsin statutes. (R. 31)

Moreover, in its answer to the appellants petition for review of the State Board's Final Order, the Company alleged that these individuals were no longer its employees. (R. 23)

The State Board did find that the individual appellants had committed unfair labor practices and issued a cease and desist order against them. It is clear that under its own theory at the time, it considered that these individuals thereby forfeited their employee status, and became subject to the loss of statutory protection from employer unfair labor practices. They also thereby forfeited their right to participate in the determination of a collective bargaining agency.

The Wisconsin Supreme Court in *Hotel and R. E. I. Alliance v. Wis.*, 236 Wis. 329, 295, N. W. 634, had ruled that by engaging in a strike where the majority had not by secret ballot previously voted in favor of such strike, all strikers thereby became strangers to the employer for purposes of the Wisconsin Act. The Court stated:

> "By engaging in an unauthorized strike, an employee may lose his status as an employee. He then has the same rights and is subject to the same liabilities as a third person. When he thus withdraws from his employment, he is free to speak, but his right to coerce his former employer is limited by the act." 236 Wis. p. 351.

This judgment was rendered in a case wherein the Wisconsin Employment Relations Board had found as conclusions of law that:

> "All of the former employees of the Plankinton House Company who went out on strike and who

remained out on strike, have been parties to an unfair labor practice, by cooperating and engaging in a strike without first obtaining the approval of a majority of such employees." 236 Wis. at p. 335.

The Wisconsin Board, in an explanatory statement accompanying its decision in that case stated:

> "Before going on strike, no vote by secret ballot authorizing the strike was taken among the employees of the hotel. This, under Chapter III of the Wisconsin Statutes, is clearly an unfair labor practice, and all of the employees taking part in such strike are necessarily parties to such unfair practice. The result to the employees, under Section 111.02 (3) of the Wisconsin Statutes, is that such employees have lost their status and are no longer employees of the Plankinton House Company. To many this result may seem to be a harsh penalty, but it is a result that flows naturally from this law, and is something which this Board as an administrative board, has nothing to do with. Here the unions took the position that Chapter III of the Wisconsin Statutes did not apply to them, that they might have a closed shop contract without complying with the provisions of this law or the award of the board of arbitration. We feel that the unions and the employees involved, in taking this position, were entirely wrong, and that as a result of the position they have taken, and particularly their failure to comply with the requirement that a vote be taken before striking, has resulted in the loss of their status as employees." (*In re Plankinton House Co.*, 5 L.R.R. Manual 650, 651, 652)

To avoid what seemed to it to be a clear challenge to the constitutionality of the Wisconsin Act, the State Supreme Court in this case, reversed its previous decision and the theory of the State Board, and held that, notwithstanding the fairly explicit language of the State

Act, a finding of the State Board of unfair labor practices by employees does not exclude them from the definition of employees, without an express order by the State Board to that effect. (R. 51–52)

But the Wisconsin Supreme Court does not deny the power of the State Board to make such an order, in this case, and under the Wisconsin Act. On the contrary, it expressly affirms that power as discretionary in the State Board. Nor does it deny the State Board the power to discourage collective bargaining by depriving the Union under the State Act of its capacity to represent its members for the purposes of collective bargaining. The opinion of the State Court leaves intact the conflicting provisions of public policy, definitions of labor dispute, of appropriate bargaining unit and of employee.

Despite the construction given to it, the State Act still stands as an obstacle to the effectuation of the federal policy expressed in the National Labor Relations Act and related legislation. Under the circumstances of this case, therefore, the State Board lacked jurisdiction to entertain the original complaint of the company. *Thornhill v. Alabama*, 310 U. S. 88, 97, 60 S. Ct. 736, 741; *Carlson v. California*, 310 U. S. 106, 112, 60 S. Ct. 746, 749.

IV.

The Wisconsin Employment Peace Act Is an Unconstitutional Exercise of the Police Power of the State.

The principal contention advanced in support of the decision below is that the State Act is a regulation of labor relations, under the police power of the State, exercised in an area which is not covered by the Federal Act. We believe, however, that we have shown that the State Act invades the control embodied in the Federal

Act over obstructions to interstate commerce due to industrial disputes.

We think the validity of the entire State Act is raised in these proceedings, since it was under the basic provisions of the entire Act that the proceedings before the State Board were originally instituted. While the final order issued by the State Board relates only to unfair labor practices of employees and labor organizations, nevertheless the challenge here is to the jurisdiction of the Board because the statute in its entirety and on its face is unconstitutional.

The rule has often been stated that when a legislative enactment has an all-pervading purpose coupled with minor details and administrative features, and this purpose is unconstitutional, such minor details and administrative features cannot survive condemnation of the same purpose.

Hill v. Wallace, 259 U. S. 44, 42 S. Ct. 453.

Dorchy v. Kansas, 264 U. S. 286, 47 S. Ct. 86.

Employers Liability Cases, 207 U. S. 463, 28 S. Ct. 141.

State v. Dammann, 228 Wisc. 147, 280 N. W. 698.

State v. Sande, 205 Wisc. 495, 238 N. W. 504.

Water Power Cases, 148 Wisc. 124, 134 N. W. 330.

Cooley, (8th Ed.) *Constitutional Limitations*, p. 362,

In *Employers' Liability Cases, supra*, the Court stated:

> "The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose. Equally clear is it, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to

the legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save, the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated. All these principles are so clearly settled as not to be open to controversy. They were all, after a full review of the authorities, restated and reapplied in a recent case. *Illinois Central Railroad v. McKendree*, 203 U. S. 514 and authorities there cited." 207 U. S. at p. 501.

In *Dorchy v. Kansas, supra*, the Court stated:

"A statute bad in part is not necessarily void in its entirety. Provisions within the legislative power may stand if separable from the bad. *Berea College v. Ky.*, 211 U. S. 45, 54–56; *Carey v. S. Dakota*, 250 U. S. 118, 121; 39 S. Ct. 403; 63 L. ed. 886. But a provision inherently unobjectionable cannot be deemed separable unless it appears both that standing alone, legal effect can be given to it, and that the legislature intended the provision to stand in case others included in the act and held bad should fall." 264 U. S. at p. 289.

It may be urged that Section 111.16 of the Wisconsin Act saves the legislation for purposes of the Final Order as issued against the union. (Appendix 80) We do not believe that the severability clause in this section can sustain any portion of the Wisconsin Act because its all pervading purpose and provisions regarding labor relations is unconstitutional. In *State v. Dammann, supra*, the Wisconsin Court considered the effect of a severability clause similar in its language to the clause in the Wisconsin Act. The Court stated:

> "This clause is very broad and is entitled to great weight as an indication of legislative intent in determining whether the unobjectionable portions of the act can stand. The clause, of course, is not conclusive, and if so little of the act remains as not to leave a 'living, complete law capable of being carried into effect "consistent with the intention of the legislature which enacted it in connection with the void part"' it is the duty of the court to decline to sustain the act in part in spite of a separability clause. *State ex rel. Reynolds v. Sande*, 205 Wis. 495, 503, 238 N. W. 504, 507; *Borgnis v. Falk Co.*, 147 Wis. 327, 133 N. W. 209; *Water Power Cases*, 148 Wis. 124, 134 N. W. 330." 228 Wis. at p. 198, 280 N. W. at p. 716.

The Final Order issued by the Board must be based on a valid enactment. The State Act is an integrated and indivisible plan of regulation of the subject of labor relations. It would be wholly illogical to declare that even though the State Act as applied to interstate commerce is invalid so far as it deals with the labor relations and collective bargaining, it is nevertheless valid for the purpose of issuing the restraining order against the Union in this particular case.

We submit that a decision against the constitutionality of the State Act will not prevent the proper exercise of the police power of a state to regulate the many aspects of the employment relation affecting the good order and peace of the state or the security of its citizens. As we have stated above, there is nothing in such a decision to prevent Wisconsin from using criminal and civil remedies and penalties to prevent the use of force or violence in labor disputes. See *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, 61 S. Ct. 552.

Nor, indeed, is there anything to prevent a state from seeking new adjustments and trying experimentation in the development of peaceful labor relations, upon two

basic conditions: **first,** that it does not abridge constitutional liberties, *Carlson v. California, supra; Thornhill v. Alabama, supra; Wolff v. Kansas Industrial Relations Board,* 262 U. S. 522, 43 S. Ct. 630; *American Federation of Labor v. Bain,* 31 Ore. Adv. 87, 106 P. (2d) 544; **second,** that it does not impair the fundamental elements of the national policy in support of collective bargaining embodied in federal legislation, *Hague v. CIO,* 307 U. S. 496, 60 S. Ct. 337; *Hines v. Davidowitz, supra; Consolidated Edison Co. v. NLRB, supra; NLRB v. Jones & Laughlin, supra.*

The Federal Act does no more than affirm the fundamental rights which make up a national labor policy. Once the practices and procedures of collective bargaining are fully accepted there yet remains a great area of problems of industrial relations and victory production for national defense that may be susceptible to proper regulation and direction by the states. We have yet to devise measures for increasing cooperation between management and labor under governmental encouragement to promote the full use of our resources. It is time to put an end to the struggle over the essential principles of collective bargaining and turn to the vital problems of production which the practices of collective bargaining may help to solve.

To labor, that is the essential contemporary significance of the federal labor policy set forth in the National Labor Relations Act and related federal legislation. We have offered a number of concrete proposals to promote efficient industrial production of military and civilian articles in sufficient quantities and on time. We have offered these proposals both for the present emergency and for the purpose of dealing with foreseeable post-war economic and social conditions. See Testimony of James B. Carey, Secretary of the CIO, on

Post-Defense Planning, Hearings before Subcommittee of Senate Committee on Education and Labor on S. 1617, S. 1833, S. Res. 178, 77th Cong., 1st Sess., pp. 79–82, which includes the text of the CIO Industry Council Plan.

We insist that the federal labor policy must be the foundation for any state legislation. We cannot go backwards. The States may not, in the name of the police power or of their right to social experimentation, undermine or challenge the foundation erected by federal law. That is what Wisconsin has tried to do in its state labor relations act. We do not see how it is possible to develop a sound national labor policy if the States are permitted to destroy the practices and procedures of collective bargaining in labor relations affecting interstate commerce protected by federal law.

CONCLUSION

It is respectfully submitted that this Court should reverse the judgment of the Wisconsin Supreme Court upholding a judgment of the circuit court for Milwaukee County, enforcing the Order of the Wisconsin Employment Relations Board against the appellants and denying the petition of the appellants to set aside said Order.

Respectfully submitted,

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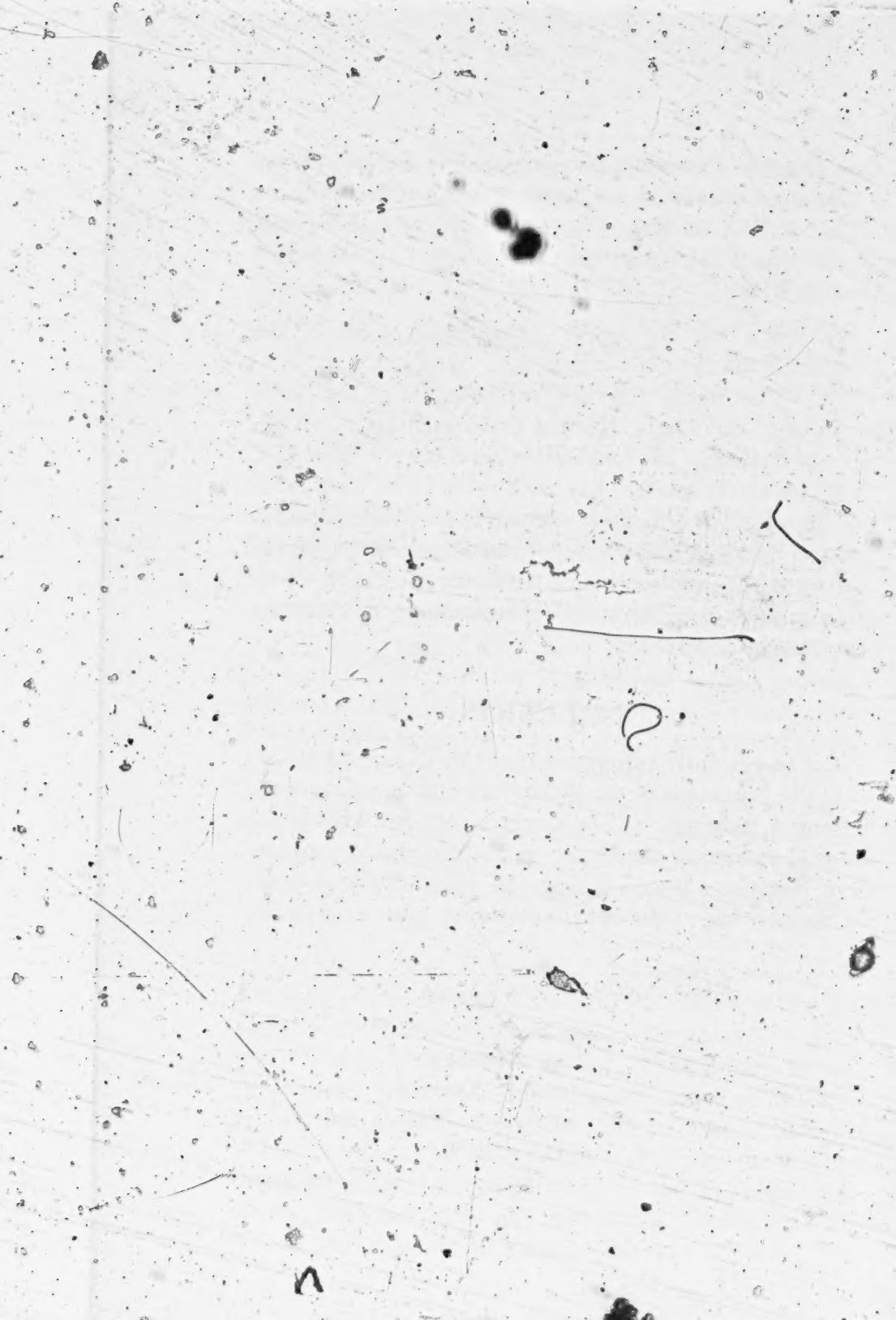

APPENDIX

This Appendix presents, in parallel columns, the texts of the National Labor Relations Act and the Wisconsin Employment Peace Act.*

NATIONAL LABOR RELATIONS ACT (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Secs. 151-166.

FINDINGS AND POLICY

Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association subtantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and

WISCONSIN EMPLOYMENT PEACE ACT, c. 111 of Wisconsin Statutes, as enacted by c. 57, laws of 1939.

DECLARATION OF POLICY

Sec. 111.01. The public policy of the state as to employment relations and collective bargaining, in the furtherance of which this chapter is enacted, is declared to be as follows:

(1) It recognizes that there are three major interests involved, namely: That of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(2) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration.

It is also recognized that what-

* *The italicised heading at the top of each column on the succeeding pages shows the last section of each Act printed on each page. Sec. 111.09 of the State Act has been taken out of its order and placed in the column next to Section 6 of the Federal Act, Sec. 111.04 next to Sec. 7, and Sec. 111.05 next to Sec. 9.*

Federal Act, Sec. 2 (1)

by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employes.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

Sec. 2. When used in this Act

Person

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

State Act, Sec. 111.02 (1)

ever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted, in the conduct of their controversy, to intrude directly into the primary rights of third parties to earn a livelihood, transact business and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint or coercion.

(3) Negotiation of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own choosing, without intimidation of coercion from any source.

(4) It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated.

While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

DEFINITIONS

Sec. 111.02. When used in this chapter:

Person

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, or receivers.

Federal Act, Sec. 2 (5)

Employer

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

Employee

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

Representatives

(4) The term "representatives" includes any individual or labor organization.

Labor Organization

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

State Act, Sec. 111.02 (3)

Employer

(2) The term "employer" means a person who engages the services of an employee, and includes any person acting on behalf of an employer within the scope of his authority, express or implied, but shall not include the state or any political subdivision thereof, or any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact.

Employee

(3) The term "employe" shall include any person, other than an independent contractor, working for another for hire in the State of Wisconsin in a non-executive or non-supervisory capacity, and shall not be limited to the employees of a particular employer unless the context clearly indicates otherwise; and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and (a) who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employee or his representative, (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder, (c) who has not obtained regular and substantially equivalent employment elsewhere, or (d) who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another

Federal Act, Sec. 2 (10)

Commerce

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

Affecting Commerce

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

Unfair Labor Practice

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

Labor Dispute

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

National Labor Relations Board

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

State Act, Sec. 111.02 (7)

engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employee who is subject to Federal Railway Labor Act.

Representative

(4) The term "representative" includes any person chosen by an employee to represent him.

Collective Bargaining

(5) "Collective bargaining" is the negotiating by an employer and a majority of his employees in a collective bargaining unit (or their representatives) concerning representation or terms and conditions of employment of such employees in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

Collective Bargaining Unit

(6) The term "collective bargaining unit" shall mean all of the employees of one employer (employed within the state), except that where a majority of such employees engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in section 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered. Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employees in each separate unit shall have voted by secret ballot as provided in section 111.05 (2) so to do.

Unfair Labor Practice

(7) The term "unfair labor practice" means any unfair labor

Federal Act, Sec. 2 (11)

Old Board

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President of June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 [113] approved June 14, 1935. [July 5, 1935, c. 372, § 2, 49 Stat. 450; 29 U. S. Code, Sec. 152.]

State Act, Sec. 111.02 (12)

practice as defined in section 111.06.

Labor Dispute

(8) The term "labor dispute" means any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute.

All Union Agreement

(9) The term "all union agreement" shall mean an agreement between an employer and the representative of his employees in a collective bargaining unit whereby all of the employees in such unit are required to be members of a single labor organization.

Board

(10) The term "Board" means the Wisconsin Employment Relations Board, as created by section 111.03.

Election

(11) The term "election" shall mean a proceeding in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this chapter and shall include elections conducted by the Board, or, unless the context clearly indicates otherwise, by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.

Secondary Boycott

(12) The term "secondary boycott" shall include combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by (a) withholding patronage, la-

Federal Act, Sec. 3 (c)

NATIONAL LABOR RELATIONS BOARD

Sec. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the orjginal members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

Quorum

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

Report

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail

State Act, Sec. 111.03

bor, or other beneficial business intercourse, (b) picketing, (c) refusing to handle, install, use or work on particular materials, equipment or supplies, or (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.

EMPLOYMENT RELATIONS BOARD

Sec. 111.02. There is hereby created a Board to be known as Wisconsin Employment Relations Board, which shall be composed of three members, who shall be appointed by the governor by and with the consent of the senate. No appointee at the time of the creation of the Board shall serve on said Board without first having been confirmed by the senate. The term of office of the members first to be appointed shall be two, four and six years respectively, but their successors shall be appointed for terms of six years each, except that any individual appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The governor shall designate one member to serve as chairman of the Board. Each member of the Board shall take and file the official oath. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board and two members of the Board shall constitute a quorum. The Board shall have a seal for the authentication of its orders and proceedings, upon which shall be inscribed the words "Wisconsin Employment Relations Board—Seal." Each member of the Board shall be eligible for reappointment and shall not engage in any other business, vocation or employment. The Board may employ, promote and

Federal Act, Sec. 4(b)

the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SALARIES AND PERSONNEL

Sec. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employes with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

Expiration of Old Board—Transfer of Records

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall

State Act, Sec. 111.03

remove a secretary, deputies, clerks, stenographers and other assistants, and examiners, fix their compensation and assign them to their duties, consistent with the provisions of this chapter. The Board shall maintain its office at Madison and shall be provided by the director of purchases with suitable rooms, necessary furniture, stationery, books, periodicals, maps and other necessary supplies. The Board may hold sessions at any place within the state when the convenience of the Board and the parties so requires. At the close of each fiscal year the Board shall make a written report to the governor of such facts as it may deem essential to describe its activities, including the cases it has heard, its disposition of the same, and the names, duties and salaries of its officers and employees. A single member of the Board is hereinafter in this chapter referred to as a commissioner.

Federal Act, Sec. 6 (a)

cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such tranafer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

Expenses of the Board

(c) All of the expenses of the Board, including all necessary traveling and subsistence, expenses outside of the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

PRINCIPAL OFFICE—INQUIRIES

Sec 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

RULES AND REGULATIONS

Sec. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such

State Act, Sec. 111.09

RULES AND REGULATIONS

Sec. 111.09. The Board may adopt reasonable and proper rules and regulations relative to the

Federal Act, Sec. 8 (3)

rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

UNFAIR LABOR PRACTICES

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C. Supp. VII, title 15, secs. 701-712), as amended from

State Act, Sec. 111.06 (1) (c)

exercise of its powers and authority and proper rules to govern its proceedings and to regulate the conduct of all elections and hearings. Such rules and regulations shall not be effective until ten days after their publication in the official state paper.

RIGHTS OF EMPLOYEES

Sec. 111.04. Employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

UNFAIR LABOR PRACTICES

Sec. 111.06. (1) It shall be an unfair labor practice for an employer individually or in concert with others:

(a) To interfere with, restrain or coerce his employees in the exercise of the rights guaranteed in section 111.04.

(b) To initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it, provided that an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with him, nor from cooperating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on company premises or the use of company facilities where such activities or use create no additional expense to the company.

(c) To encourage or discourage

Federal Act, Sec. 8 (5)

time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

State Act, Sec. 111.06 (1) (g)

membership in any labor organization, employee agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment; provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit, where three-quarters or more of the employees in such collective bargaining unit shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the Board. The Board shall declare any such all-union agreement terminated whenever it finds that the labor organization involved has unreasonably refused to receive as a member any employee of such employer, and each such all-union agreement shall be made subject to this duty of the Board. Any person interested may come before the Board as provided in section 111.07 and ask the performance of this duty.

(d) To refuse to bargain collectively with the representative of a majority of his employees in any collective bargaining unit; provided, however, that where an employer files with the Board a petition requesting a determination as to majority representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to him by the Board.

(e) To bargain collectively with the representatives of less than a majority of his employees in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in subsection (1) (c) of this section.

(g) To refuse or fail to recog-

nize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer accepted.

(h) To discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony in good faith under the provisions of this chapter.

Next Federal section is Sec. 9(a) at p. 67.

(i) To deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable at the end of any year of its life by the employee giving at least thirty days written notice of such termination.

(j) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this chapter.

(k) To make, circulate or cause to be circulated a blacklist as described in section 343.682.

(l) To commit any crime or misdemeanor in connection with any controversy as to employment relations.

Employee's Unfair Labor Practices

(2) It shall be an unfair labor practice for an employee individually or in concert with others:

(a) To coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employee or his family.

(b) To coerce, intimidate or induce any employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in section 111.04, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative.

(c) To violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award).

(d) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employees or their representatives accepted.

Next Federal section is Sec. 9(a) at p. 67

(e) To cooperate in engaging in, promoting or inducing picketing, boycotting, or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

(g) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, equipment or services; or to combine or conspire to hinder

Federal Act, Sec. 9 (a)

REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

State Act, Sec. 111.05 (1)

or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

(h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.

(i) To fail to give the notice of intention to strike provided in section 111.11.

(j) To commit any crime or misdemeanor in connection with any controversy as to employment relations.

(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subsections (1) and (2) of this section.

REPRESENTATIVES AND ELECTIONS

Sec. 111.05. (1) Representatives chosen for the purposes of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all of the employees in such unit for the purposes of collective bargaining; provided that any individual employee or any minority group of employees in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and the employer shall

Federal Act, Sec. 9 (d)

Collective Bargaining Unit

(b) The Board shall decide in each case whether in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

Investigations—Certification of Representatives—Secret Ballots

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

Records in Case of Petition for Enforcement or Review

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

State Act, Sec. 111.05 (4)

confer with them in relation thereto.

(2) Whenever a question arises concerning the determination of a collective bargaining unit as defined in Section 111.02, (6), it shall be determined by secret ballot, and the Board, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department or plant as to the determination of the collective bargaining unit.

(3) Whenever a question arises concerning the representation of employees in a collective bargaining unit the Board shall determine the representatives thereof by taking a secret ballot of employees and certifying in writing the results thereof to the interested parties and to their employer or employers. There shall be included on any ballot for the election of representatives the names of all persons submitted by an employee or group of employees participating in the election, except that the Board may, in its discretion, exclude from the ballot one who, at the time of the election, stands deprived of his rights under this chapter by reason of a prior adjudication of his having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by anyone named on the ballot. The Board's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed in the same manner as provided by subsection (8) of section 111.06 for review of orders of the Board.

(4) Questions concerning the determination of collective bargaining units or representation of employees may be raised by petition of any employee or his employer (or the representative of either of them). Where it appears by the petition that any emergency exists requiring

Federal Act, Sec. 10 (b).

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

Complaint—Procedure

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint

State Act, Sec. 111.07 (2).

prompt action, the Board shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, provided that it appears to the Board that sufficient reason therefor exists.

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 111.07. (1) Any controversy concerning unfair labor practices may be submitted to the Board in the manner and with the effect provided in this chapter, but nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction.

Complaints—Procedure

(2) Upon the filing with the Board by any party in interest of a complaint in writing, on a form provided by the Board, charging any person with having engaged in any specific unfair labor practice, it shall mail a copy of such complaint to all other parties in interest. Any other person claiming interest in the dispute or controversy, as an employer, an employee, or their representative, shall be made a party upon application. The Board may bring in additional parties by service of a copy of the complaint. Only one such complaint shall issue against a person with respect to a single controversy, but any such complaint may be amended in the discretion of the Board at any time prior to the issuance of a final order based thereon. The person or persons so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and

Federal Act, Sec. 10 (c)

and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

Findings of Fact—Orders

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

State Act, 111.07 (2)

give testimony at the place and time fixed in the notice of hearing. The Board shall fix a time for the hearing on such complaint, which will be not less than ten nor more than forty days after the filing of such complaint, and notice shall be given to each party interested by service on him personally or by mailing a copy thereof to him at his last known post office address at least ten days before such hearing. In case a party in interest is located without the state and has no known post office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the Secretary of State and shall also be sent by registered mail to the last known post office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon a party located within this state. Such hearing may be adjourned from time to time in the discretion of the Board and hearings may be held at such places as the Board shall designate.

Subpoenas

The Board shall have the power to issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by section 101.21. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture under the laws of the State of Wisconsin; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of

Federal Act, Sec. 10 (e)

Modification and Setting Aside of Orders

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

Board Petitions to Federal Courts

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or

State Act, Sec. 111.07 (3)

any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before the Board in obedience to a subpoena issued by it; provided, that an individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall willfully and unlawfully fail or neglect to appear or to testify or to produce books, papers and records as required, shall, upon application to a circuit court, be ordered to appear before the Board, there to testify or produce evidence if so ordered, and failure to obey such order of the court may be punished by the court as a contempt thereof.

Each witness who shall appear before the Board by its order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record; which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the chairman of the Board and charged to the proper appropriation for the Board.

Hearings Before Board

(3) A full and complete record shall be kept of all proceedings had before the Board, and all testimony and proceedings shall be taken down by the reporter appointed by the Board. Any such proceedings shall be governed by the rules of evidence prevailing in courts of equity and the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence.

Federal Act, Sec. 10 (e)

in part, the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

State Act, Sec. 111.07 (5)

Findings of Fact

(4) After the final hearing the Board shall promptly make and file its findings of fact upon all of the issues involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination by it of any controversy before it the Board may, after hearing make interlocutory findings and orders which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights, immunities, privileges or remedies granted or afforded by this chapter for not more than one year, and require him to take such affirmative action, including reinstatement of employees with or without pay, as the Board may deem proper. Any order may further require such person to make reports from time to time showing the extent to which it has complied with the order.

(5) The Board may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the Board as a body to review the findings or order. If no petition is filed within twenty days from the date that a copy of the finding or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the Board as a body unless set aside, reversed or modified by such commisioner or examiner within such time. If the findings or order are set aside by

Federal Act, Sec. 10 (g)

Petition for Review by an Aggrieved Party

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

Effect of Court Proceedings on Orders of the Board

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the

State Act, Sec. 111.07 (7)

the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the Board shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within ten days after the filing of such petition with the Board, the Board shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the Board is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another twenty days for filing a petition with the Board.

(6) The Board shall have the power to remove or transfer the proceedings pending before a commissioner or examiner. It may also, on its own motion, set aside, modify or change any order, findings or award (whether made by an individual commissioner, an examiner, or by the Board as a body) at any time within twenty days from the date thereof if it shall discover any mistake therein, or upon the grounds of newly discovered evidence.

Board Petitions to State Courts

(7) If any person fails or neglects to obey an order of the Board while the same is in effect the Board may petition the circuit court of the county wherein such person resides or usually transacts business for the enforcement of such order and for

Federal Act, Sec. 11 (1)

court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

Hearings

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

Sec. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

Subpoenas—Administration of Oaths

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency

State Act, Sec. 111.07 (7)

appropriate temporary relief or restraining order, and shall certify and file in the court its record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which such order was entered, and the findings and order of the Board. Upon such filing the Board shall cause notice thereof to be served upon such person by mailing a copy to his last known post office address, and thereupon the court shall have jurisdiction of the proceedings and of the question determined therein. Said action may thereupon be brought on for hearing before said court upon such record by the Board serving ten days written notice upon the respondent; subject, however, to provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing the court may confirm, modify, or set aside the order of the Board and enter an appropriate decree. No objection that has not been urged before the Board shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of fact made by the Board, if supported by credible and competent evidence in the record, shall be conclusive. The court may, in its discretion, grant leave to adduce additional evidence where such evidence appears to be material and reasonable cause is shown for failure to have adduced such evidence in the hearing before the Board. The Board may modify its findings as to the facts, or make new findings by reason of such additional evidence, and it shall file such modified or new findings with the same effect as its original findings and shall file its recommendations, if any, for

Federal Act, Sec. 11 (3)

conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

Enforcement of Subpoenas in the District Courts

(2) In case of contumacy or refusal to obey a subpoena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony, touching the matter under investigation or in question; and at any failure to obey such order of the court may be punished by said court as a contempt thereof.

Obedience to Subpoenas Required

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject

State Act, 111.07 (8)

the modification or setting aside of its original order.

The court's judgment and decree shall be final except that the same shall be subect to review by the Supreme Court in the same manner as provided in section 102.25.

Petition for Review by an Aggrieved Party

(8) Within thirty days from the date of the order of the Board as a body any party aggrieved thereby may petition the circuit court for the county in which he or any party resides or transacts business for review of the same; subject, however, to provisions of law for a change of the place of trial or the calling in of another judge. Where different parties in the same proceeding file petitions for review in two or more courts having proper jurisdiction, the jurisdiction of the court first petitioned shall be exclusive and the other petitions shall be transferred to it. Such petition shall state the grounds upon which a review is sought, and shall be served with the summons. Service upon the Secretary of the Board or any member of the Board shall be deemed completed service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are respondents, and the Board shall mail one such copy to each respondent. If the circuit court is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of the findings or order, it may extend the time another thirty days in which such action may be commenced. The Board shall thereupon file in the said court its record in the proceedings, as provided in the next preceding subsection. Such re-

Federal Act, Sec. 11 (5)

him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Method of Service of Papers and Process

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Service on Defendant in Judicial Districts

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the

State Act, 111.07 (13)

turn of the Board, when filed in the office of the clerk of the circuit court, shall constitute a judgment roll in such action, and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' written notice to the other. Upon such hearing the court may confirm, modify or set aside the order of the Board and enter an appropriate decree. Except as specifically provided otherwise herein the proceedings shall be the same as provided for in subsection (7) of this section.

(9) In any proceedings for review of an order of the Board the court shall disregard any irregularity or error unless it be made to appear affirmatively that the complaining party was prejudiced thereby.

(10) Commencement of proceedings under subsections (7) or (8) of this section shall, unless otherwise specifically ordered by the court, operate as a stay of the Board's order.

(11) Petitions filed under this section shall have preference over any civil cause of a different nature pending in the circuit court, shall be heard expeditiously, and the circuit courts shall always be deemed open for the trial thereof.

(12) A substantial compliance with the procedure of this chapter shall be sufficient to give effect to the orders of the Board, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

(13) A transcribed copy of the evidence and proceedings or any part thereof on any hearing taken by the stenographer appointed by

Federal Act, Sec. 11 (6)

defendant or other person required to be served resides, or may be found.

Use of Records and Information Possessed by Other Governmental Agencies

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession, relating to any matter before the Board.

State Act, Sec. 111.10

the Board, being certified by such stenographer to be a true and correct transcript, carefully compared by him with his original notes, and to be a correct statement of such evidence and proceedings, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand free of cost to any party (all of the members of a single organization being considered a single party).

(14) The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

FINANCIAL REPORTS TO EMPLOYEES

Sec. 111.08. Every person acting as the representative of employees for collective bargaining shall keep an adequate record of its financial transactions and shall present annually to each member within sixty days after the end of its fiscal year a detailed written financial report thereof in the form of a balance sheet and an operating statement. In the event of failure of compliance with this section, any member may petition the Board for an order compelling such compliance. An order of the Board on such petition shall be enforcible in the same manner as other orders of the Board under this chapter.

ARBITRATION

Sec. 111.10. Parties to a labor dispute may agree in writing to have the Board act or name arbitrators in all or any part of such dispute, and thereupon the Board shall have the power so to act. The Board shall appoint as arbitrators only competent, impartial and disinterested persons.

Proceedings in any such arbitration shall be as provided in Chapter 298 of the statutes.

MEDIATION

Sec. 111.11. The Board shall have power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon its own initiative or upon the request of one of the parties to the dispute. It shall be the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the Board shall have any power of compulsion in mediation proceedings. The Board shall provide necessary expenses for such mediators as it may appoint, order reasonable compensation not exceeding ten dollars per day for each such mediator, and prescribe reasonable rules of procedure for such mediators.

Next Federal section is Sec. 12 at p. 79

Where the exercise of the right to strike by employees of any employer engaged in the State of Wisconsin in the production, harvesting or initial processing (the latter after leaving the farm) of any farm or dairy product produced in this state would tend to cause the destruction or serious deterioration of such product, the employees shall give to the Board at least ten days notice of their intention to strike and the Board shall immediately notify the employer of the receipt of such notice. Upon receipt of such notice, the Board shall take immediate steps to effect mediation, if possible. In the event of the failure of the efforts to mediate, the Board shall endeavor to induce the parties to arbitrate the controversy.

INTERFERENCE WITH BOARD MEMBERS OR AGENTS

Sec. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

Sec. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

DUTIES OF THE ATTORNEY GENERAL AND DISTRICT ATTORNEYS

Sec. 111.12. Upon the request of the Board, the Attorney General or the district attorney of the county in which a proceeding is brought before the circuit court for the purpose of enforcing or reviewing an order of the Board shall appear and act as counsel for the Board in such proceeding and in any proceeding to review the action of the circuit court affirming, modifying or reversing such order.

EMPLOYER AND EMPLOYEE COMMITTEES

Sec. 111.13. The Board may, from time to time, appoint joint standing or special committees composed in equal numbers of representatives of employees and employers. The Board may refer to any such committee for its study and advice any matters having to do with the relations of employers and employees or the operation of this chapter.

PENALTY

Sec. 111.14. Any person who shall willfully assault, resist, prevent, impede or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this chapter shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than one year, or both.

CONSTRUCTION OF THIS CHAPTER

Sec. 111.15. Except as specifically provided in this chapter, nothing herein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything

CONFLICTS WITH OTHER ACTS

Sec. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77B, paragraphs (1) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (1) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: Provided, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEPARABILITY

Sec. 15. If any provision of this Act, or the application of such provision to any person or cir-

in this chapter be so construed as to invade unlawfully the right to freedom of speech. And nothing in this chapter shall be so construed or applied as to deprive any employee of any unemployment benefit which he might otherwise be entitled to receive under chapter 108 of the statutes.

EXISTING CONTRACTS UNAFFECTED

Sec. 111.16. Nothing in this chapter shall operate to abrogate, annul, or modify any valid agreement respecting employment relations existing on the effective date hereof.

CONFLICT WITH OTHER ACTS

Sec. 111.17. Wherever the application of the provisions of other statutes or laws conflict with the application of the provisions of this chapter, this chapter shall prevail, provided that in any situation where the provisions of this chapter cannot be validly enforced the provisions of such other statutes or laws shall apply.

SEPARABILITY

Sec. 111.18. If any provision of this chapter or the application of such provision to any person or

Federal Act, Sec. 16

cumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SHORT TITLE

Sec. 16. This Act may be cited as the "National Labor Relations Act."

State Act, Sec. 111.19

circumstances shall be held invalid the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SHORT TITLE

Sec. 111.19. This chapter may be cited as the "Employment Peace Act."